



REMARKS

Claims 1-10, 13 and 16-19, as amended, appear in this application for the Examiner's review and consideration. The claims have been amended to correct informalities and to more clearly define the scope of protection sought by the present application. In particular, claims 1 and 17 were amended to recite that the retainer structure is arranged to impart a desired shape to the retainer assembly. Support for this amended can be found in the specification as originally filed at page 3, lines 19-21. Claims 11, 12, 14 and 15 have been withdrawn from consideration with the present invention as being drawn to a non-elected species without prejudice to pursue the subject matter of these claims in one or more divisional or continuation applications. As these amendments do not introduce any new matter into the above identified application, their entry at this time is warranted.

It was stated that the application contains claims directed to the following patentably distinct species of the claimed invention:

- a. Species 1 as illustrated by Figure 1
- b. Species 2 as illustrated by Figure 4
- c. Species 3 as illustrated by Figure 6
- d. Species 4 as illustrated by Figure 9.

Applicant was required to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted in not generic claim is finally held allowable. Claims 1, 3, 4, 13 and 16 were found to be generic. As was stated during the telephone conversation with Applicant's representative on October 5, 2004, Applicant elects Species 1 and identifies claims 1-10, 13 and 16-19 as reading on this species. Claims 11, 12, 14 and 15 have been withdrawn from consideration with the present application but may be added to the application upon allowance of a generic claim.

The disclosure and drawings were objected to for several formalities as indicated on pages 3-5 of the Office Action. Applicant has submitted herewith a substitute specification that corrects and resolves all of these informalities. The substitute specification has been provided with both markings and in a clean version. As provided, the substitute specification does not introduce any new subject matter into the present application, and its entry at this time is warranted. In particular, the substitute specification provides for the description of embodiments of the present invention as shown in the drawings as originally filed.

Application notes that common numbers and structures appear in all of the figures as

originally filed. In addition, the claims are fully supported by the specification as originally filed. Therefore, these objections have been overcome and should be withdrawn.

Several of the claims were objected to because of informalities as stated on pages 5-6 of the Office Action. Applicant asserts that the amendments to the claims as made herein correct these informalities. With respect to the Markush form of claim 5, 8 and 18, Applicant asserts that as has been recognized by the PTO, a Markush group is a listing of specified alternatives of a group in a patent claim, typically expressed in the form “a member selected from the group consisting of A,B and C,” but which also can be expressed, for instance, as “wherein R is [comprises] A, B, C or D.” *See* Appeal No. 2003-1162 at page 8. Therefore, these objections have been overcome and should be withdrawn.

Claims 1-10, 13 and 16-19 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. US2002/0172560 to Dreyer for the reasons stated on pages 6-8 of the Office Action. It was asserted that Dreyer discloses a flotation unit or retainer structure and an anchor assembly attached to the retainer structure that defines the limits of the motion of the retainer structure in three dimensions. It was also asserted that Dreyer discloses an attachment mechanism containing either stitches from sewing or a heat bond through heat fusion whereby a curtain member, typically made from oleophilic geosynthetic fabric, is secured to the retainer structure. The anchor assembly was said to include spoke members and a least one tether element whereby the spoke is attached to the retainer structure via a sleeve and in contact with the tether at an anchor block. Applicant asserts that this rejection has been overcome for the reasons that follow.

Dreyer is directed to a Y-panel anchoring system for a containment or exclusion boom. The Y-panel member is adapted to be connected to a flexible fabric curtain of the containment or exclusion boom and includes first and second skirt panels having proximal ends joined together and distal ends substantially against the floor of a body of water. As illustrated, the invention of Dreyer is embodied in a boom that includes a flotation unit and an upper curtain member. The flotation unit can include one or more lengths of a buoyant material, for example expanded polystyrene. The curtain member has an upper sleeve, and the flotation unit is disposed in the sleeve. The flotation unit provides a temporary, floating support system the keep the boom afloat.

By contrast, as presently recited in claims 1 and 17, the present invention is directed to a retainer assembly that includes a retainer structure, an anchor assembly attached to the

retainer structure and arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point and an attachment mechanism to secure one or more remediation materials to the retainer structure. The retainer structure is arranged to impart a desired shape to the retainer assembly. The desired shape can be a fixed shape or can be one of plurality of desired shapes. In addition, the retainer structure can be buoyant or can be heavier than water. There is no teaching or disclosure in Dreyer of a retainer structure that imparts a desired shape, i.e. a circle or rectangle, to the overall retainer assembly. This desired shape can be used to fit an area or object over which the retainer assembly is positioned, for example a circular manhole or a rectangular storm water catchment. The flotation unit in Dreyer is not arranged to impart a desired shape and is disclosed as only being buoyant. In fact there is no suggestion or teaching in Dreyer of the need to provide a desired shape to a retainer assembly and no discussion of positioning such assemblies over objects like manholes or storm drains. Moreover, it appears that the flotation unit allows the boom to bend or flex with the current of the body of water in which it is placed. All of the other claims depending either directly or indirectly from claims 1 and 17 and include additional recitations not disclosed in Dreyer. Since Dreyer fails to disclose or teach of the recitations of the claims, the present rejection has been overcome and should be withdrawn.

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,332,737 to Mattson for the reasons given on page 8 of the Office Action. It was asserted that Mattson discloses a retainer structure including tube extensions and an anchor assembly attached to the retainer structure and arranged to define the limits of motion of the retainer structure. In addition, Mattson was said to disclose an attachment mechanism that secures a hydrocarbon absorbent sock. Applicant asserts that this rejection has been overcome for the reasons that follow.

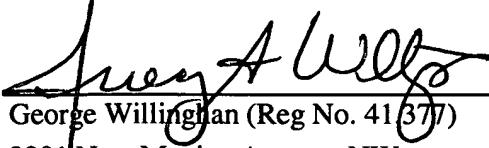
Mattson is directed to a waterway pollution control apparatus that includes an adjustable length boom which extends above a creek, an elongated, hydrocarbon absorbent sock which is suspended from the boom and extends across the creek and a sheet of water-porous fabric having one end connected to the boom. The boom is constructed from a plurality of telescoping tubes and may be fixed at the desired length by aligning apertures of overlapping tube extensions and inserting a locking pin in each of the aligned apertures. Each end of the boom is coupled to an anchor shoe that is staked on a side of the creek.

By contrast, as presently recited in claim 1, the present invention is directed to a retainer assembly that includes a retainer structure, an anchor assembly attached to the retainer structure and arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point and an attachment mechanism to secure one or more remediation materials to the retainer structure. The retainer structure is arranged to impart a desired shape to the retainer assembly. This can be a fixed shape or can be one of a plurality of desired shapes. In addition, the retainer structure can be buoyant or can be heavier than water. There is no teaching or disclosure in Mattson of a retainer structure that imparts a desired shape, i.e. a circle or rectangle, to the overall retainer assembly. In addition, Mattson fails to teach or disclose an anchor assembly attached to the retainer structure and arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point. In fact, the anchor shoes of Mattson are staked on the sides of a creek and coupled to the ends of the boom. Therefore, the boom of Mattson cannot move at all and does not provide for any motion. In fact, water will eventually begin to spill over the top of the boom in Mattson. The limits of motion recited in the present invention provide for movement of the retainer assembly, for example flotation, while still maintaining the assembly in proper alignment with the desired structure, i.e. a storm drain, and the remediation materials in proper alignment, for example on the top of the water to catch contaminants that are lighter than water. This movement allows for changes in water flow that are typical of rain events. Since Mattson fails to disclose or teach all of the recitations of claim 1, the present rejection has been overcome and should be withdrawn.

Applicant asserts that all claims are now in condition for allowance, early notification of which is respectfully requested. A petition for a three month extension of time and provisions for payment of the prescribed fee are enclosed herewith. As the present amendments do not introduce any new claims above the original number of filed claims, no additional fees are believed due for the submission of this amendment.

Respectfully submitted,

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Enclosures